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Plaintiff - *In Pro Se*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SAMUEL BERNARD JOHNSON III,

Plaintiff,

vs.

CHEVRON CORPORATION, a Delaware
corporation, CHEVRON
ENVIRONMENTAL MANAGEMENT
COMPANY, a California corporation, and
DOES 1-10,

Defendants

Case No.: C 07-05756 SI (JCS)

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR LEAVE
TO FILE A FIRST AMENDED
COMPLAINT**

DATE: Friday, July 18, 2008

TIME: 9:00 a.m.

COURTROOM: 10, 19th Floor

JUDGE: Honorable Susan Illston

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
FACTUAL AND PROCEDURAL BACKGROUND	2
ARGUMENT	5
I. LEAVE TO AMEND A COMPLAINT SHOULD BE FREELY GIVEN WHEN JUSTICE SO REQUIRES	5
II. FEDERAL LAW AND ITS RULES OF COURT SUPPORT THE GRANTING OF PLAINTIFF JOHNSON’S LEAVE TO FILE A FIRST AMENDED COMPLAINT	7
A. The First Amended Complaint Is Based On New Facts And/Or Information Recently Made Available To Plaintiff Johnson	7
B. The First Amended Complaint Is Based On Adding The Dismissed Defendants Under The Correct 42 U.S.C. Section And Bringing New Claims Against All Of The Named Defendants And/Or Parties	8
C. The Chevron Defendants Would Not Suffer Prejudice In Plaintiff Johnson Filing A First Amended Complaint	9
D. There Is No Delay Or Bad Faith In Plaintiff Johnson Seeking Leave To File A First Amended Complaint	10
E. Plaintiff Johnson Provided Notice To Counsel For Chevron That He Planned On Filing A First Amended Complaint Before Counsel For Chevron Filed Its Answer To Plaintiff Johnson’s Original Complaint	10
F. Adding Additional Parties As Defendants To This Action Does Not Prejudice The Chevron Defendants	11
G. Plaintiff Johnson Will Be Able to Seek Full Satisfaction From All Relevant Parties With The Court Granting Plaintiff Johnson’s Leave To File A First Amended Complaint	13
III. CALIFORNIA LAW AND ITS RULES OF COURT SUPPORT THE GRANTING OF PLAINTIFF JOHNSON’S LEAVE TO FILE A FIRST AMENDED COMPLAINT	14
A. Leave To Amend Is Even Given Freely Under California Law And Its Rules Of Court	14
B. Under California Law And Its Rules Of Court A Pretrial Conference Order Can Be Amended	16

IV.	PLAINTIFF JOHNSON MEETS THE “EXTREME LIBERALITY” STANDARD FOR ALLOWANCE OF THE FILING OF A FIRST AMENDED COMPLAINT.....	16
V.	PLAINTIFF JOHNSON’S REASONS FOR SEEKING LEAVE TO FILE A FIRST AMENDED COMPLAINT JUSTIFY ALLOWANCE OF THE MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT.....	17
	A. Filing Of A First Amended Complaint Was Explicitly Contemplated By Counsel For Chevron.....	19
	B. Counsel For Chevron States To Plaintiff Johnson That It Had An April 3, 2008, Deadline To File A Motion To Dismiss The Dismissed Defendants Per The Court’s Rules.....	20
	C. Counsel For Chevron Contends That Plaintiff Johnson Can Only Seek Relief And Damages Against The Chevron Defendants For The Dismissed Defendants Alleged Misconduct.....	21
	D. Counsel For Chevron Breached The Agreement Surrounding The Parties Dismissing The Dismissed Defendants.....	23
	E. Counsel For Chevron Provided False And Misleading Information To Plaintiff Johnson And The Court And Should Be Admonished As Well As Sanctioned For Such Conduct And Unprofessional Behavior.....	25
	F. Plaintiff Johnson Has Not Acted In Bad Faith, Amongst Various Other Things As Erroneously Alleged By Counsel For Chevron.....	26
VI.	THE PROPOSED FIRST AMENDED COMPLAINT IS NEITHER UNDULY PREJUDICIAL TO THE CHEVRON DEFENDANTS.....	27
	A. The Proposed Amendment Is Not Unduly Prejudicial.....	27
	B. The Proposed Amendment Is Not Futile.....	28
VII.	CONCLUSION.....	29

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.</i> , 989 F.Supp 1237 (N.D. Cal. 1997)	5, 6
<i>Ascon Properties, Inc. v. Mobil Oil Co.</i> , 866 F.2d 1149 (9 th Cir. 1989)	5
<i>DCD Programs, Ltd. v. Leighton</i> , 833 F.2d 183 (9 th Cir. 1987)	7, 9, 17
<i>Dussouy v. Golf Coast Investments Corp.</i> , 660 F.2d 594 (5 th Cir. 1991)	8
<i>Eminence Capital, LLC v. Aspeon, Inc.</i> , 316 F.3d 1048 (9 th Cir. 2003)	6
<i>Espey v. Wainright</i> , 734 F.2d 748 (11 th Cir. 1994)	8
<i>Foman v. Davis, Exexutrix</i> , 371 U.S. 178 (1962)	5, 6, 7, 10, 13
<i>Gabrielson v. Montgomery Ware & Co.</i> , 785 F.2d 762 (9 th Cir. 1986)	17
<i>Genentech, Inc. v. Abbott Laboratories</i> , 127 F.R.D. 529 (N.D. Cal. 1989)	5
<i>Grayson v. Kmart Corp.</i> , 79 F.3d 1096 (11 th Cir. 1996)	8
<i>Griffin v. County School Bd.</i> , 377 U.S. 218, 227 (1964)	12
<i>Howey v. United States</i> , 481 F. 2d 1187 (9 th Cir. 1973)	10
<i>Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau</i> , 701 F.2d 1276 (9 th Cir. 1983)	7
<i>Lopez v. Smith</i> , 203 F.3d 122 (9 th Cir. 2000)	7
<i>Lundy v. Adamar of New Jersey, Inc.</i> 34 F.3d 1173 (3 rd Cir. 1994)	9
<i>McGlinchy v. Shell Chemical Co.</i> , 845 F.2d 802 (9 th Cir. 1988)	6

1	<i>Morongo Band of Mission Indians v. Ross</i> ,	
2	893 F.2d 1074 (9 th Cir. 1990).....	17
3	<i>Owens v. Kaiser Found. Health Plan, Inc.</i> ,	
4	244 F.3d 708 (9 th Cir. 2001).....	7
5	<i>Price v. Kammer</i> ,	
6	200 F.3d 1237 (9 th Cir. 2000).....	7
7	<i>Rolf v. City of San Antonio</i> ,	
8	77 F.3 rd 823 (5 th Cir. 1996).....	7
9	<i>Senza-Gel Corp. v. Seiffhart</i> ,	
10	803 F.2d 661 (Fed. Cir. 1986).....	5
11	<i>United States v. Webb</i> ,	
12	655 F.2d 977 (9 th Cir. 1981).....	17
13	<i>United Steelworkers of Am., AFL-CIO v. Mesker Bros. Indus. Inc.</i> ,	
14	457 F.2d 91 (8 th Cir. 1972).....	7
15	FEDERAL STATUTES	
16	Fed.R.Civ.P. 1.....	13
17	Fed.R.Civ.P. 11.....	25
18	Fed.R.Civ.P. 15.....	5, 12
19	Fed.R.Civ.P. 15(a).....	7, 18
20	Fed.R.Civ.P. 15(b).....	13
21	Fed.R.Civ.P. 15(d).....	12
22	Fed.R.Civ.P. 21.....	12
23	The Civil Rights Act of 1866,	
24	42 U.S.C. section 1981.....	3, 6, 8, 10, 20, 21, 22, 27
25	42 U.S.C. section 1981(a).....	2, 6
26	42 U.S.C. section 1983.....	2, 3, 11, 18, 19, 21
27	Title I of the Americans With Disabilities Act of 1990,	
28	42 U.S.C. section 12101, <i>et. seq.</i>	2, 6
	Title VII of the Civil Rights Act of 1964, as amended,	
	42 U.S.C. section 2000(e), <i>et. seq.</i>	2, 6
	42 U.S.C. section 2000e-5(g).....	2

FEDERAL PUBLICATIONS/OTHER MATERIALS

3 Moore's Federal Practice, section 15.16(1) (3d ed. 2008).....	12
3 Moore's Federal Practice, sections 18:08, 15:10 (2d ed. 1948).....	13
6 Wright, Miller & Kane, Federal Practice and Procedure, section, 1484 at 600 (2 nd ed. 1990 and 2008 Supp.).....	10
William W. Schwarzer, et al. Federal Civil Procedure Before Trial, section 8:415, at 8-75 (1991).....	5

STATE CASES

<i>Atkinson v. Elk Corp.</i> , (2003) 109 Cal.App.4 th 739.....	15
<i>Bedolla v. Logan & Frazer</i> , (1975) 52 Cal.App.3d 118; 125 Cal.Rptr. 59.....	15
<i>Dos Pueblos Ranch & Imp. Co. v. Ellis</i> , (1937) 8 Cal.2d 617; 67 P.2d 340.....	15
<i>Fairfield v. Hamilton</i> , (1962) 206 Cal.App.2d 594; 24 Cal.Rptr. 73.....	15
<i>Farmers' Nat. Gold Bank v. Stover</i> , (1882) 60 Cal. 387.....	15
<i>Greenberg v. Equitable Life Assur. Society</i> , (1973) 34 Cal.App.3d 994; 110 Cal.Rptr. 470.....	15
<i>Hirsa v. Superior Ct.</i> , (1981) 118 Cal.App.3d 486.....	14
<i>Klopstock v. Superior Ct.</i> , (1941) 17 Cal.2d 13.....	14
<i>Nestle v. City of Santa Monica</i> , (1972) 6 Cal.3d 920.....	14
<i>Roemer v. Retail Co.</i> , 44 Cal.App.3d 926.....	15
<i>Ross v. McDougal</i> , (1939) 31 Cal.App.2d 114; 87 P.2d 709.....	15
<i>Solit v. Tokai Bank, Ltd.</i> (1999) 68 Cal.App.4 th 1435.....	15

Vick v. Grasser,
(1959) 169 Cal.App.2d 692; 338 P.2d 223 15

Weingarten v. Block,
(1980) 102 Cal.App.3d 129; 162 Cal.Rpt. 701 15

STATE STATUTES

California Civil Procedure section 473 14, 15

California Civil Procedure section 576 14, 15

California Fair Employment and Housing Act,
(California Government Code section 12940, *et. seq.*) 2, 6

STATE PUBLICATIONS/OTHER MATERIALS

3 Witkin, California Procedure (2d ed.),
section 1042, p. 2621 15

The Chevron Way, <http://www.chevron.com/about/chevronway>,
Chevron Corporation, June 5, 2008 21, 22

INTRODUCTION

Samuel Bernard Johnson III, (hereinafter referred to as “Plaintiff Johnson”) moves the Court, pursuant to Federal Rule of Civil Procedure 15, 15(a), 15(d) and 21, for leave to file a First Amended Complaint. A copy of the proposed First Amended Complaint is attached to this motion as Exhibit A¹. This motion is based upon this pleading and other documents and pleadings on file in this action. The motion is filed because of the following: *First*, the First Amended Complaint provides additional details concerning Plaintiff Johnson’s allegations and claims in this action against the defendants. These allegations and claims in no way alter the underlying allegations and claims set forth in the original Complaint or otherwise substantially alters the content of the original Complaint. *Second*, in accordance with Federal, State and their Civil Local Rules, Plaintiff Johnson has requested consent from Filice Brown Eassa & McLeod LLP, (hereinafter referred to as “Counsel for Chevron”) for the filing of a First Amended Complaint. Counsel for Chevron has stated they will *oppose* such a filing. *See* April 16, 2008, Joint Case Management Statement at, (hereinafter referred to as “April 16, 2008, CMS”). *See also* May 9, 2008, Joint Case Management Statement at 5:1-5 and at Court Docket #33, (hereinafter referred to as the “May 9, 2008, Joint CMS”) at 5-6:13. *See also* Court Docket #44. *Third*, such an action by Counsel for Chevron is contrary to the fact that the proposed filing of an amended Complaint would not unduly prejudice Defendants Chevron Corporation and Chevron Environmental Management Company, (hereinafter referred to as the “Chevron Defendants”) in this action.

After all, were this motion denied, Plaintiff Johnson could simply opt to file a brand new action against Catherine Drew, Kathryn M. Gallacher, Robert Schmitt, Harald Smedal, Susan J. Solger, Sellers Stough, Krystal Tran, Debbie Wong, Gary A. Yamashita and Chevron Corporation Long-Term Disability Plan Organization, (hereinafter referred to as the “Dismissed Defendants”), without regard to this existing action. Such an action would also call for Plaintiff Johnson to name the Chevron Defendants. Allowing the filing of a First Amended Complaint

¹ In the interests of saving filing space and paper for all involved, Plaintiff Johnson has not filed his proposed exhibits to the First Amended Complaint with this motion. The exhibits to the First Amended Complaint remain the same as those in the prior and current original Complaint. If leave to amend is granted, Plaintiff Johnson can and will file a copy with the appropriate exhibits.

1 would *streamline* the process and result in a great efficiency, as it would not require the new
2 action against the Dismissed Defendants and the Chevron Defendants to start anew from scratch.
3 Furthermore, no motion to dismiss or motion for summary judgment or adjudication has been
4 filed with the Court as of yet, and the Chevron Defendants have not taken a single deposition,
5 issued a single set of document requests, subpoenas or request for admissions. Of notice is that
6 Counsel for Chevron just recently propounded interrogatories on June 2, 2008. Such actions by
7 Counsel for Chevron should have no bearing on Plaintiff Johnson's motion for leave to file a
8 First Amended Complaint. Amendment of the Complaint would also not be futile. Since the
9 Chevron Defendants opted *not* to file a motion to dismiss, even though such was *strongly* stated
10 to the Court that the Chevron Defendants would do such. *See* Counsel for Chevron's Response
11 to the William H. Alsup's Order for Request for Clarification in this action at Court Docket #19.
12 Given the former, the Court must weigh the *probative value* of the claims alleged herein.
13 Plaintiff Johnson's motion should be granted and the First Amended Complaint should be
14 deemed filed as of the date of the Court's order granting the motion for leave to amend.

15 **FACTUAL AND PROCEDURAL BACKGROUND**

16 On Wednesday, November 14, 2007, Plaintiff Johnson filed his original Complaint with
17 the Court alleging employment-related claims under Title VII of the Civil Rights Act of 1964, as
18 amended, (42 U.S.C. § 2000(e), *et. seq.*), Title I of the Americans with Disabilities Act of 1990,
19 (42 U.S.C. § 12101, *et seq.*) the California Fair Employment and Housing Act (California
20 Government Code § 12940, *et. seq.*) and equitable and other relief is sought under 42 U.S.C. §
21 2000e-5(g) and 42 U.S.C. § 1981a. During the week of March 24, 2008, Plaintiff Johnson
22 agreed to dismiss the Dismissed Defendants, *without prejudice*, leaving only the Chevron
23 Defendants as the defendants in this action. Plaintiff Johnson also agreed to dismiss the 42
24 U.S.C. section 1983 claims against all defendants with *prejudice*. Prior to the April 1, 2008,
25 Stipulation being filed with the Court, Plaintiff Johnson informed Counsel for Chevron that he
26 had incorrectly cited a 42 U.S.C. section 1983 claim in this action. The parties also discussed the
27 fact that Plaintiff Johnson did not exhaust all mandatory administrative remedies under Title VII
28 and the California Fair and Housing Act as no right-to-sue letter was obtained for each

1 defendant, as required per statute and has been interpreted by multiple state and federal decisions
2 before naming the Dismissed Defendants. In the interest to save the parties and the Court time,
3 Plaintiff Johnson *voluntarily* agreed to dismiss the Dismissed Defendants to *streamline* this
4 action for *settlement* purposes only. Counsel for Chevron agreed with Plaintiff Johnson on this
5 very subject so the parties initiated the process of dismissing the Dismissed Defendants with the
6 agreement that Plaintiff Johnson could amend his Complaint at a later date. Such is further
7 supported based off telephone calls, emails between Plaintiff Johnson and Counsel for Chevron.
8 Through these communications and with the filing of the April 1, 2008, Stipulation Plaintiff
9 Johnson construed such to mean that Counsel for Chevron would *not* oppose Plaintiff Johnson's
10 Motion for Leave to File a First Amended Complaint.

11 The above is further supported when the agreement on this given subject was
12 consummated on April 1, 2008, when Counsel for Chevron and Plaintiff Johnson filed Parties
13 Stipulation Dismissing Certain Defendants and Plaintiff Johnson's 42 U.S.C. section 1983
14 claims. The Court entered an Order in conformity with this Stipulation on April 1, 2008. *See*
15 April 1, 2008, Stipulation and Order at Court Docket #31. Prior to the Stipulation being
16 executed by the parties, Plaintiff Johnson informed Counsel for Chevron that he had planned to
17 file an amended Complaint with the Court on April 1, 2008. Such an action by Plaintiff Johnson
18 would remove the 42 U.S.C section 1983 claim as well as cite to the correct 42 U.S.C. claim of
19 section 1981 against the Dismissed Defendants. Counsel for Chevron filed an Answer to the
20 original Complaint on April 10, 2008. Thereafter the parties filed an April 16, and May 9, 2008,
21 CMS'. *See* Court Docket #'s 33 and 44 respectively. When Counsel for Chevron filed these
22 pleadings they breached the parties agreement that was reached in the April 1, 2008, Stipulation
23 and Order at Court Docket #31. Such a breach is further reflected when Plaintiff Johnson
24 wanted to exercise the provisions of the April 1, 2008, Stipulation and Order to amend the
25 Complaint without having to seek leave from the Court. Even as Plaintiff Johnson exercises his
26 right to amend the Complaint with leave from the Court, Counsel for Chevron wants to cry foul
27 and state that they will *oppose* such a motion. *See* May 9, 2008, Joint CMS at 5-6:13 and at
28 Court Docket #44.

1 The parties appeared before the Honorable William H. Alsup on April 24, 2008, for a
 2 Case Management Conference. Immediately thereafter, the Honorable William H. Alsup
 3 informed the parties that he would recuse himself from this action, vacated all dates in the action
 4 as well as referred the action to the Court's Reassignment Committee. *See* April 24, 2008,
 5 Recusal Order at Court Docket #38. On April 25, 2008, the Court's Reassignment Committee
 6 informed the parties that this action had been assigned to the Honorable Susan Illston. *See*
 7 Court's Reassignment Order at Court Docket #39. On April 30, 2008, the Honorable Susan
 8 Illston informed the parties that she had set a Further Case Management Conference for Friday,
 9 May 16, 2008. *See* Clerk's Notice at Court Docket #41. On May 9, 2008, Plaintiff Johnson
 10 informed the Court of the agreement reached between the parties pertaining to amongst other
 11 things to dismiss the Dismissed Defendants in order to *streamline* this action for settlement
 12 purposes. Plaintiff Johnson also requested that the Court enforce the agreement between the
 13 parties and set this action for the Court's ADR Program.

14 The parties filed an April 16, 2008, CMS. Thereafter parties conducted a May 21, 2008,
 15 Case Management Conference, (hereinafter referred to as the "May 21, 2008, CMC") before the
 16 Honorable Susan Illston, who in turn issued a May 22, 2008, Pretrial Preparation Order
 17 (Corrected), (hereinafter referred to as the "May 22, 2008, PPO(C). On May 17, 2008, Plaintiff
 18 Johnson made a request for miscellaneous relief (letter) to the Court for amongst other things to
 19 reinstate his right to file a first amended Complaint without having to obtain a stipulation or file
 20 a motion for leave. Counsel for Chevron on May 19, 2008, informed the Court that they *opposed*
 21 such a request by Plaintiff Johnson, further stating "Plaintiff Johnson must do what any other
 22 plaintiff must do and seek leave from the Court to file a first amended Complaint...". On May
 23 20, 2008, Plaintiff Johnson provided the Court with additional information as to why the Court
 24 should grant Plaintiff Johnson's request for miscellaneous relief (letter). *See* Court Docket #'s
 25 45, 46, and 47 respectively. On May 28, 2008, the Court instructed Plaintiff Johnson to file a
 26 motion to amend the original complaint pursuant to Fed.R.Civ.P. 15. *See* Court's May 28, 2008,
 27 Order at 19-20 and at Court Docket #52.
 28

ARGUMENT

I. LEAVE TO AMEND A COMPLAINT SHOULD BE FREELY GIVEN WHEN JUSTICE SO REQUIRES

Federal Rule of Civil Procedure 15(a) provides that “a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires”. In *Foman v. Davis, Executrix*, 371 U.S. 178, 182 (1962), the Supreme Court listed factors that the district court should consider in deciding whether to grant leave to amend:

Rule 15(a) declares that leave to amend “shall be freely given when justice so requires”, this mandate is to be heeded...In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by the amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.--the leave sought should, as the rules require, be “freely given”.

This Court has recognized and upheld this principle, for example, in *Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.*, stated that “the court must be very liberal in granting leave to amend a complaint”, noting that “[t]his rule reflects an underlying policy that disputes should be determined on their merits, and not on the technicalities of pleading rules”. *Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.*, 989 F.Supp 1237 at 1241 (N.D. Cal. 1997). The Court has also held that “[o]nce a party seeking leave to amend has given a legitimate reason for amendment, the burden shifts to the party opposing amendment to demonstrate why leave to amend should not be granted”. *Genentech*, 127 F.R.D. at 530-31 (citing *Senza-Gel Corp. v. Seiffhart*, 803 F.2d 661, 666 (Fed. Cir. 1986)); *William W. Schwarzer et al., Federal Civil Procedure Before Trial*, § 8:415, at 8-75 (1991). “There are several accepted reasons why leave to amend should not be granted, including the presence of bad faith on the part of the plaintiff, undue delay, prejudice to the defendant, futility of amendment, and that the party has previously amended the relevant pleading”. See *Ascon Properties*, 866 F.2d at 1160;

1 *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 809 (9th Cir. 1988). “The court has the
2 discretion to determine whether the presence of any of these elements justifies refusal of a
3 request to amend the pleading”. *Id.* Plaintiff Johnson asserts that the Chevron Defendants will
4 not be able to meet such a burden as Plaintiff Johnson has done none of the accepted reasons
5 why leave to amend should not be granted by the Court.

6 Plaintiff Johnson seeks in *good faith* to amend the Complaint to properly name additional
7 defendants under The Civil Rights Act of 1866, 42 U.S.C. § 1981 claims, amend Title VII of the
8 Civil Rights Act of 1964, as amended, 2000(e), *et. seq.* claims, amend Title I of the Americans
9 with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, *et seq.* claims, add Title VII of the
10 Civil Rights Act of 1991, 42 U.S.C. § 1981a claims, amend California Fair Employment and
11 Housing Act, California Government Code § 12940, *et. seq.* claims, add additional defendants,
12 seek leave from the Court to amend the original Complaint on the grounds that the Federal Rules
13 of Civil Procedure support liberal amendment policy, and that the factors considered by courts in
14 connection with a Motion to Amend favor granting such a motion. The changes in the First
15 Amended Complaint do not alter the underlying claims set forth in the original Complaint, nor
16 do they include facts that are not already known to the Chevron Defendants.

17 Given the aforementioned circumstances, it cannot be said that Plaintiff Johnson’s motion
18 imposes any under prejudice upon the Chevron Defendants. *Foman*, 371 U.S. at 172. Similarly,
19 there has been no undue delay by Plaintiff Johnson in amending the original Complaint, nor
20 failures to cure any alleged deficiencies. The Court in granting Plaintiff Johnson’s motion would
21 provide the Court and the Chevron Defendants with important and useful information relevant to
22 many of the concerns and issues raised by the parties based off the pleadings that have been filed
23 in the record with the Court. The Court in granting Plaintiff Johnson’s motion would be
24 consistent with the “underlying policy that disputes should be determined on their merits, and not
25 on the technicalities of pleading rules”. *Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys.,*
26 *Inc.*, 989 F.Supp at 1241. Plaintiff Johnson contends that the Ninth Circuit stresses that Rule
27 15(a) is to be applied liberally. In *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048 (9th
28 Cir. 2003), the Court held that the district court erred by failing to grant the plaintiff leave to

1 amend its Complaint. The Court stated:

2 After a party has amended a pleading once as a matter of course, it may
3 only amend further after obtaining leave of the court, or by consent of
4 the adverse party. Fed.RCiv.P. 15(a). Generally, Rule 15 advises the

5 court that “leave shall be freely given when justice so requires”. This
6 policy is “to be applied with extreme liberality”.

7 *Id.* at 1051. See also *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d
8 708, 712 (9th Cir. 2001); *Price v. Kramer*, 200 F.3d 1237, 1250 (9th Cir. 2000); *Lopez*
9 *v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). “The party opposing
10 amendment bears the burden of showing prejudice”. *DCD Programs, Ltd. v.*
11 *Leighton*, 833 F.2d 183, 197 (9th Cir. 1987). After listing the *Foman v. Davis*
factors, the Court stated:

12 Not all of the factors merit equal weight. As this circuit and others have
13 held, it is the consideration of prejudice to the opposing party that carries
14 the greatest weight. Absent prejudice, or a strong showing of any of the
15 remaining *Foman* factors, there exists a presumption under Rule 15(a) in
16 favor of granting leave to amend. A simple denial of leave to amend
17 without any explanation by the district court is subject to reversal. Such a
18 judgment is “not an exercise of discretion; it is merely abuse of that
19 discretion and inconsistent with the spirit of the Federal Rules.” *Foman*,
20 371 U.S. at 182; *Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv.*
Bureau, 701 F.2d 1276, 1292-93 (9th Cir. 1983) (noting “where the
record does not clearly dictate the district court’s denial, we have been
unwilling to affirm absent written findings”); *Rolf v. City of San Antonio*,
77 F.3d 823, 828-29 (5th Cir. 1996); *United Steelworkers of Am., AFL-*
CIO v. Mesker Bros. Indus., Inc., 457 F.2d 91, 94 (8th Cir. 1972).

21 *Id.* at 1052 (emphasis added).

22 **II. FEDERAL LAW AND ITS RULES OF COURT SUPPORT THE GRANTING OF 23 PLAINTIFF JOHNSON’S LEAVE TO FILE A FIRST AMENDED COMPLAINT**

24 **A. The First Amended Complaint Is Based On New Facts And/Or Information 25 Recently Made Available To Plaintiff Johnson**

26 Based on discovery obtained through an administrative proceeding entitled *Samuel B.*
27 *Johnson III v. Chevron Corporation, et al.*, State of California, Department of Industrial
28 Relations, Division of Workers’ Compensation, Workers’ Compensation Appeal Board,
Stockton District Office, Case No. STK 0206833 new factual allegations and claims emphasize

these points that merit and warrant the filing of a First Amended Complaint. Counsel for Chevron admits that it has “produced [nearly] 9000 pages of discovery in the administrative proceeding....” See May 9, 2008, Joint CMS at 6:21 and at Court Docket #44. Counsel for Chevron cannot dispute this known fact, as it provided assistance in reviewing as well as Bates stamping these documents for production in the above-referenced administrative proceeding. Likewise, “[d]istrict Courts have only limited discretion to deny a party leave to amend the pleading. Thus, the court is constrained to allow a plaintiff leave to amend unless there are substantial contravailing reasons”. *Grayson v. Kmart Corp.*, 79 F.3d 1096, 1110 (11th Cir. 1996) (citing *Espey v. Wainwright*, 734 F.2d 748 (11th Cir. 1994) and *Dussouy v. Gulf Coast Investments Corp.*, 660 F.2d 594, 597 (5th Cir. 1991)).

B. The First Amended Complaint Is Based On Adding The Dismissed Defendants Under the Correct 42 U.S.C. Section And Bringing New Claims Against All of The Named Defendants And/Or Parties

On Wednesday, November 14, 2007, Plaintiff Johnson filed with the Court his original Complaint. In the original Complaint Plaintiff Johnson named the following defendants: a) Chevron Corporation; b) Chevron Corporation Long-Term Disability Plan Organization; c) Chevron Environmental Management Company; d) Catherine Drew; e) Kathryn M. Gallacher; f) Susan J. Solger; g) Sellers Stough; h) Krystal Tran; i) Debbie Wong; and j) Gary A. Yamashita. Plaintiff Johnson stipulated to dismiss defendants b) and d) through j) as he had not exhausted all mandatory administrative remedies under Title VII and the California Fair and Housing Act as no right-to-sue letter had been obtained for the Dismissed Defendants before naming them in this action. Plaintiff Johnson amongst other things also informed Counsel for Chevron that he would re-add defendants b) and d) through j) under a 42 U.S.C. section 1981 claim as well as new claims by way of amending the original Complaint within sixty (60) days. Given such, Plaintiff Johnson agreed to stipulate to dismiss defendants b) and d) through j) with such an understanding with Counsel for Chevron that he would be allowed to amend the original Complaint at a later date. See April 16, 2008, Joint CMS at 5:1-5 and at Court Docket #33. See also May 9, 2008, Joint CMS at 5:10-19 and at Court Docket #44. See also ¶ 1-13 and 23 Decl. of Plaintiff Johnson ISO of Plaintiff’s Motion for Leave to File A First Amended Complaint.

In addition to the above, Plaintiff Johnson dismissed defendants b) and d) through j) in order to save the Court the time and effort of having to review a Motion to Dismiss, an opposition and a reply to a Motion to Dismiss. Plaintiff Johnson further contends that such was done with reverence for the Court's current docket given the fact that Plaintiff Johnson would not be successful in opposing such a motion to dismiss. *See* April 16, 2008, Joint CMS and at 5:14-19 at Court Docket #33. *See also* ¶ 38 Decl. of Plaintiff Johnson ISO of Plaintiff's Motion for Leave to File A First Amended Complaint.

C. The Chevron Defendants Would Not Suffer Prejudice In Plaintiff Johnson Filing A First Amended Complaint

The Chevron Defendants would not suffer any prejudice from the filing of a First Amended Complaint. As one court has explained, "to show prejudice to the party opposing the amendment of a complaint "must show that it was unfairly disadvantage or deprived of the opportunity to present facts or evidence which it would have offered had the...amendments been timely". *Lundy v. Adamar of New Jersey, Inc.*, 34 F.3d 1173, 1189 n.22 (3rd Cir. 1994). As the Ninth Circuit has stated, "[t]he party opposing amendment bears the burden of showing prejudice". *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). The Chevron Defendants cannot demonstrate any prejudice, because they will have ample time to prepare their case (defense) in response to the First Amended Complaint. Moreover, Plaintiff Johnson is complying with the deadlines set by the Court for filing amended pleadings. (*See* May 22, 2008, PPO(C) at Court Docket #50. The non-expert discovery deadline is September 26, 2008. The trial is set for April 2009. (*Id.*) As all parties are clearly aware of Plaintiff Johnson raised objections to such deadlines that were relentlessly fought for by Counsel for Chevron. It was Plaintiff Johnson's foresight in seeing that he would file a motion to amend the original Complaint is why he sought to have the April 2009, trial date moved out. Such was also done with reverence for the parties to be able to properly conducted *full* discovery if the parties were not successful in reaching a settlement outside of the Court or through the Court's ADR Program.

Plaintiff Johnson states that among the factors articulated by the Supreme Court in *Foman*,² prejudice to the defendant is the most important. Indeed, “[i]f no prejudice is found, then leave will normally be granted”.³ Here, Plaintiff Johnson asserts that no such prejudice is exacted on the Chevron Defendants as the parties can clearly request by stipulation to seek to move the May 22, 2008, PPO(C) deadlines out to ensure that proper discovery is conducted on the alleged claims as asserted by Plaintiff Johnson as well as to allow the Chevron Defendants to prepare a proper defense.

D. There Is No Delay Or Bad Faith In Plaintiff Johnson Seeking Leave To File A First Amended Complaint

Plaintiff Johnson contends that there is no undue delay. The proposed First Amended Complaint has been submitted prior to the Court’s deadline for amending pleadings. Moreover, the case has been pending for less than one year. As the Ninth Circuit stated in *Howey v. United States*, 481 F.2d 1187, 1190-1191 (9th Cir. 1973):

[W]e know of no case where delay alone was deemed sufficient grounds to deny a Rule 15(a) motion to amend. Here there is a lack of prejudice to the opposing party and the amended complaint is obviously not frivolous, or made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny such a motion. The purpose of the litigation process is to vindicate meritorious claims. Refusing solely because of delay, to permit an amendment to a pleading in order to state a potentially valid claim would hinder this purpose while not promoting any other sound judicial policy. Only where prejudice is shown or the movant acts in bad faith are courts protecting the judicial system or other litigants when they deny leave to amend a pleading.

Here, no prejudice would result to the Chevron Defendants and Plaintiff Johnson’s First Amended Complaint is not *frivolous* or made as a *dilatory maneuver in bad faith*.

E. Plaintiff Johnson Provided Notice To Counsel For Chevron That He Planned On Filing A First Amended Complaint Before Counsel For Chevron Filed Its Answer To Plaintiff Johnson’s Original Complaint

On or around March 24, 2008, Plaintiff Johnson informed Counsel for Chevron that he was going to file a First Amended Complaint to add a 42 U.S.C. section 1981 claim against defendants b) and d) through j). Counsel for Chevron asked Plaintiff Johnson when he planned

²*Foman*, 371 U.S. 178 (1962).

³ 6 Wright, Miller & Kane, Federal Practice and Procedure § 1484 at 600 (2d ed. 1990 and 2008 Supp.).

on doing such. Plaintiff Johnson in turn informed Counsel for Chevron in March of 2008 that he planned to file a First Amended Complaint on April 1, 2008. However, before Plaintiff Johnson could file his First Amended Complaint pursuant to Fed.R.Civ.P.15 (once as a matter of course), Counsel for Chevron breached the April 1, 2008, Stipulation and Order as well as made certain false and misleading statements in the April 16, and May 9, 2008, Joint CMS'. Such actions by Counsel for Chevron robbed Plaintiff Johnson with the right to file a First Amended Complaint pursuant to Rule 15 (once as a matter of right). Even after doing the aforementioned, Counsel for Chevron wants to cry foul and state that it will *oppose* Plaintiff Johnson filing a motion to amend the original Complaint to fully seek the relief for the allegations brought in this action.

Prior to the above taking place, the parties also spoke about preparing and filing a Stipulation that would dismiss the 42 U.S.C. section 1983 claims as well as would remove defendants b) and d) through j) from this action as Plaintiff Johnson had not exhausted all mandatory administrative remedies under Title VII and the California Fair and Housing Act as no right-to-sue letter was obtained for the Dismissed Defendants. Counsel for Chevron also informed Plaintiff Johnson that there was urgency to have a stipulation executed as she had until April 3, 2008, to file a Motion to Dismiss per the Court's rules. Such a motion by Counsel for Chevron would move to dismiss the 42 U.S.C. section 1983 claims as well as defendants b) and c) through j). In an effort to save the parties and the Court's time in dealing with a briefing schedule that Plaintiff Johnson would not be successful in opposing, Plaintiff Johnson began the process of negotiating a Stipulation. The parties presented such to the Court on April 1, 2008. The Court in turned executed the Stipulation on April 1, 2008. *See* Court Docket #'s 30 and 31 respectively. *See also* Plaintiff's Declaration ISO of Motion for Leave to File First Amended Complaint at ¶¶18-23.

F. Adding Additional Parties As Defendants To This Action Does Not Prejudice The Chevron Defendants

Federal Rule of Civil Procedure 21 focuses specifically on amendments to add parties and provides in part that "[p]arties may be added by order of the court on motion of any party at any stage of the action and on such terms as are just". This is further supported by "[l]iberal

standards upon which amendments are to be granted when leave of court is required under Rule 15(a) should also guide trial judge[s] in resolving motions to add parties under Rule 21⁴. The standards for adding a party pursuant to Rule 21 and for amending pleadings to add a party pursuant to Rule 15(a) are the same after the opposing party has filed a responsive pleading.⁵ Rule 15(d) addresses supplemental pleadings and authorizes a court to permit “a supplemental pleading setting out any transaction, occurrence or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time...”⁶. Like Rules 15(a) and 15(d), Rule 21 permits amendments to add parties. The Supreme Court has stated that “[s]uch amendments are well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice.”⁷ Thus, supplemental pleadings are particularly favored when they will permit the entire controversy to be resolved in a single case and where the additional allegations involve the same issues, subject matter or facts. Finally, in accordance with the mandate of Rule 1, all of these rules “shall be construed and administered to secure the just, speedy, and inexpensive determination of every action”⁸.

Should the Court deny the relief that Plaintiff Johnson seeks by the filing of this motion, Plaintiff Johnson will simply file anew action against the Dismissed Defendants and the Chevron Defendants for the claims and the relief that he seeks by way of requesting leave to file a First Amended Complaint. Should the Court also deny the relief that Plaintiff Johnson seeks in adding additional parties as defendants, then such is contrary to Fed.R.Civ.P 1. *Id.* By adding additional defendants to fully litigate all claims as well as to seek the full appropriate relief from all parties is not considered to be a *bad faith* tactic as Counsel for Chevron would like for this

⁴ Fed.R.Civ.P. 21.

⁵ See 3 Moore’s Federal Practice § 15.16(1) (3d ed. 2008) (“where the motion to amend comes after responsive pleadings have been served, the standard for adding a party is the same whether the motion is made under Rule 15 or Rule 21. . .”).

⁶ Fed.R.Civ.P. 15(d).

⁷ *Griffin v. County School Bd.*, 377 U.S. 218, 227 (1964).

⁸ Fed.R.Civ.P. 1.

1 Court to believe. Under Rule 21, Plaintiff Johnson re-adds the Dismissed Defendants as well as
 2 adds Defendants Robert Schmitt and Harald Smedal to this action.

3 **G. Plaintiff Johnson Will Be Able To Seek Full Satisfaction From All Relevant Parties**
 4 **With The Court Granting Plaintiff Johnson's Leave To File A First Amended**
 5 **Complaint**

6 With the re-adding of defendants b) and d) through j) and adding Defendants Robert
 7 Schmitt and Harald Smedal Plaintiff Johnson will be able to seek full satisfaction from all
 8 relevant parties and ascertain the full extent of damages done by all defendants. Rule 15 of the
 9 Federal Rules of Civil Procedure provides that to amend pleadings, "shall be freely given when
 10 justice so requires". This mandate of liberal amendment extends even to amending pleadings at
 11 trial to conform to the evidence. *See* Fed.R.Civ.P. 15(b).

12 As noted by the United States Supreme Court in *Foman v. Davis*:

13 Rule 15(a) declares that leave to amend "shall be freely given when
 14 justice so requires"; this mandate is to be heeded. *See generally*, 3
 15 Moore Federal Practice (2d ed. 1948), 18.08, 15.10. If the underlying
 16 facts and circumstances relied upon by a plaintiff may be a proper
 17 subject for relief, he ought to be afforded an opportunity to test his claim
 18 on the merits. In the absence of any apparent or declared reason-such as
 19 undue delay, bad faith or dilatory motive on the part of the movant,
 20 repeated failure to cure deficiencies by amendments previously allowed,
 21 undue prejudice to the opposing party by virtue of the allowance of the
 22 amendment, futility of amendment, etc.-the leave sought should, as rules
 23 require be given freely.

24 *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

25 Although leave to amend "shall be given freely when justice so requires", the decision to
 26 allow an amendment is purely discretionary. The Court cannot, however, abuse its discretion by
 27 denying leave to amend unless Plaintiff Johnson has abused his privilege in the past, there has
 28 been some undue delay, Plaintiff Johnson has repeatedly failed to cure deficiencies by
 amendments previously allowed or the amendment will clearly prejudice the opposing party.

Here, there are no such grounds for refusing amendment. *First*, there is no issue of
 repeated failure to cure deficiencies. *Second*, the Chevron Defendants cannot claim any
 prejudice by virtue of this amendment. The proposed amendment contains the same claims
 against the Chevron Defendants. Such information was previously known to the Chevron

Defendants when Plaintiff Johnson filed his original Complaint. Counsel for Chevron was made aware of the additional claims that Plaintiff Johnson alleges against all of the defendants before the parties filed an April 16, and May 9, 2008 CMS', as such was communicated by Plaintiff Johnson to Counsel for Chevron. Moreover, Plaintiff Johnson's amendment is timely. Accordingly, Plaintiff Johnson's motion to file a First Amended Complaint should be granted.

III. CALIFORNIA LAW AND ITS RULES OF COURT SUPPORT THE GRANTING OF PLAINTIFF JOHNSON'S LEAVE TO FILE A FIRST AMENDED COMPLAINT

A. Leave To Amend Is Even Given Freely Under California Law And Its Rules Of Court

California law and its rules of court favor amending of pleadings as, "a judge may, at any time, in the furtherance of justice, and upon such terms as may be proper, allow the amendment of any pleading. California Civil Procedure sections 473 and 576. As the Court and Counsel for Chevron are aware, Plaintiff Johnson brought claims seeking relief under California law. *See* original Complaint at Court Docket #1. By way of this Motion for Leave to File a First Amended Complaint, Plaintiff Johnson will be amending those California claims. Given the foregoing, as a general rule, and certainly in the present circumstance here, leave to amend is liberally granted. Sections 473⁹ and 576 of the Code of Civil Procedure provide that a court may, in the furtherance of justice, allow a party to amend any pleading on any terms as may be proper. (Code of Civ. Proc. §§ 473(a)(1), 576¹⁰). "This statutory provision giving the courts the power to permit amendments in furtherance of justice has received a very liberal interpretation by the court of this state". (*Klopstock v. Superior Ct.*, (1941) 17 Cal.2d 13, 19; *see also Nestle v. City of Santa Monica*, (1972) 6 Cal.3d 920, 939). "That trial courts are to liberally permit such amendments, at any stage of the proceeding, has been established policy in this state since 1901". (*Hirsa v. Superior Ct.*, (1981) 118 Cal.App.3d 486, 488-89). Accordingly, it is an abuse of

⁹ "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code".

¹⁰ "Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order".

discretion to deny leave to amend unless the adverse party can show meaningful prejudice, such as the running of the statute of limitations, trial delay, the loss of critical evidence, or added preparation costs. (*Atkinson v. Elk Corp.*, (2003) 109 Cal.App.4th 739, 761; *Solit v. Tokai Bank, Ltd.*, (1999) 68 Cal.App.4th 1435, 1448). Under California law and its rules of Court leave should be granted because the amendment will serve an important purpose without any risk of prejudice to the Chevron Defendants.

Plaintiff Johnson states that in *Weingarten v. Block* this very basic principal of allowing an amendment of a pleading is reflected in “[the] trial court has discretion to allow an amendment to any pleading in furtherance of justice at any time before or after the commencement of trial.” *See* Code Civ. Proc., §§ 473, 576. “Liberality in permitting amendments is the rule”. *See Greenberg v. Equitable Life Assur. Society*, (1973) 34 Cal.App.3d 994 [110 Cal.Rptr. 470]. “As a matter of policy, the ruling of the trial court will be upheld, unless a manifest or gross abuse of discretion is shown”. *See Bedolla v. Logan & Frazer*, (1975) 52 Cal.App.3d 118, 135 [125 Cal.Rptr. 59]. *See also, Weingarten v. Block*, (1980) 102 Cal.App.3d 129, 134; 162 Cal.Rptr. 701. In *Roemer v. Retail Co.*, the Court stated, “[a]lthough failure to permit such amendment where justice requires it is an abuse of discretion”. *See Vick v. Grasser* (1959) 169 Cal.App.2d 692, 701 [338 P.2d 223]; *Fairfield v. Hamilton* (1962) 206 Cal.App.2d 594, 602 [24 Cal.Rptr. 73]; *Farmers’ Nat. Gold Bank v. Stover*, (1882) 60 Cal. 387, 390, “the objectionable subject matter of the amendment, the conduct of the moving party, or the belated presentation of the amendment are appropriate matters for the reviewing court to consider in evaluating the trial courts exercise of discretion” (3 Witkin, Cal. Procedure (2d ed.) § 1042, p. 2621; *Dos Pueblos Ranch & Imp. Co. v. Ellis* (1937) 8 Cal.2d 617, 622 [67 P.2d 340]; *Ross v. McDougal* (1939) 31 Cal.App.2d 114, 121 [87 P.2d 709]). *See Roemer v. Retail Co.*, 44 Cal.App.3d 926, 939. For the reasons stated herein, the Court not only should grant leave to amend, but should also amend its May 22, 2008, PPO(C) to take into account the time that it will take the defendants to properly answer the First Amended Complaint as well as for the parties to conduct proper discovery of the new claims raised by Plaintiff Johnson in the filing of his First Amended Complaint.

B. Under California Law And Its Rules Of Court A Pretrial Conference Order Can Be Amended

During the May 21, 2008, CMC, Plaintiff Johnson objected to the April 2009, trial date on the grounds that such placed this action on a fastrak (expedited) trial. While the Court has agreed with Counsel for Chevron's position on this matter, the Court also stated that the April 2009, trial date could be moved out. (paraphrased). Plaintiff Johnson fought hard to have the April 2009, trial date moved out as he foresaw that he would be seeking leave from the Court to amend the original Complaint to add additional parties as defendants. Such would cause the parties to have thirty (30) days to return a waiver of service and then sixty (60) days to answer the First Amended Complaint. When the Court approves Plaintiff Johnson's Motion to File a First Amended Complaint in July of 2008, that would mean that the entire process for all the parties to waive service as well as to provide an answer to Plaintiff Johnson's First Amended Complaint would be sometime in October of 2008. As the Court and all parties are aware, the Court has set another Case Management Conference for Friday, October 24, 2008. Plaintiff Johnson believes that the Court in its wisdom also foresaw that Plaintiff Johnson would be seeking leave to file a First Amended Complaint and therefore set an October 24, 2008, Case Management Conference to address such issues as the upcoming April 2009, trial date.

Given the new claims that Plaintiff Johnson has asserted against the Chevron Defendants and the Dismissed Defendants as well as adding two (2) additional defendants, Plaintiff Johnson will need additional time to obtain discovery as well as to take depositions after the Court grants Plaintiff Johnson's Motion to file a First Amended Complaint.

IV. PLAINTIFF JOHNSON MEETS THE "EXTREME LIBERALITY" STANDARD FOR ALLOWANCE OF THE FILING OF A FIRST AMENDED COMPLAINT

Federal Rule of Civil Procedure governs motions for leave to file an amended complaint. *See* Federal Rule of Civil Procedure 15(a). It provides that a plaintiff may amend the complaint once as of right, and thereafter either by stipulation or leave of court, which the rule emphasizes "shall be freely given when justice so requires". *Id.*¹¹ Interpreting Rule 15's permissive stance

¹¹ "Prior to filing this motion, Plaintiff Johnson informed Counsel for Chevron that he was going to amend the original Complaint on April 1, 2008. In an attempt to rob Plaintiff Johnson of his "right to file an amended complaint once as a matter of course", Counsel for Chevron breached the April 1, 2008, Stipulation and Order, made certain statements in the April 16, and May 9, 2008, Joint CMS' as well as filed an Answer to the Complaint on

toward amendment of the pleadings, the Ninth Circuit has recognized that “the underlying purpose of Rule 15 [is] to facilitate decision on the merits, rather than on the pleadings or technicalities,” and as a result has consistently held that “Rule 15’s policy of favoring amendments to pleadings should be applied with “extreme liberality”. *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981); *see also Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (same); *DCD Programs v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (“This court has noted “on several occasions... that the “Supreme Court has instructed the lower federal courts to heed carefully the command of Rule 15 F[ed.]R.Civ.P., by freely granting leave to amend when justice so requires.””) (quoting *Gabrielson v. Montgomery Ware & Co.*, 785 F.2d 762, 765 (9th Cir. 1986)).

As shown below, Plaintiff Johnson’s motion assuredly meets this “extreme liberality” standard. Plaintiff Johnson’s reasons for adding the Dismissed Defendants are as follows: *First*, Plaintiff Johnson incorrectly referenced the wrong 42 U.S.C. section in the November 14, 2007, original Complaint to properly seek relief and damages against the Dismissed Defendants; *Second*, Plaintiff Johnson should be free to seek relief against any party and/or defendant that justice so requires him to do so in order to fully adjudicate the alleged claims against not only the Chevron Defendants, but against the Dismissed Defendants; and *Third*, a party seeking leave to amend an original Complaint should be given freely when justice so requires.

V. PLAINTIFF JOHNSON’S REASONS FOR SEEKING LEAVE TO FILE A FIRST AMENDED COMPLAINT JUSTIFY ALLOWANCE OF THE MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT

Plaintiff Johnson seeks to amend the original Complaint for three discrete reasons. *First*, Plaintiff Johnson incorrectly referenced the wrong 42 U.S.C. section in the November 14, 2007, original Complaint to properly seek relief against the Dismissed Defendants. As Fed.R.Civ.P. 15(a) states, a plaintiff may amend the Complaint once as of right. As referenced above, Counsel for Chevron robbed Plaintiff Johnson of his right once as a matter of course when Counsel for Chevron made certain false and misleading statements about why the parties

April 10, 2008. Counsel for Chevron did such even after it made certain communications to Plaintiff Johnson stating in a draft pleading prior to filing its April 10, 2008, Answer that due to the stay imposed by the Honorable William H. Alsup that they did not know when to file their Answer to the Complaint.

1 stipulated to dismiss the Dismissed Defendants when the parties filed the April 16, and May 9,
2 2008, Joint CMS' and when Counsel for Chevron filed its April 10, 2008, Answer to the original
3 Complaint. *See* Court Docket #'s 33, 44 and 32. Counsel for Chevron further made misleading
4 and false statements when it informed Plaintiff Johnson and the Court that they did not know
5 when they were suppose to file their Answer to the original Complaint given the fact that the
6 Honorable William H. Alsup had stayed this action. Counsel for Chevron also sought guidance
7 from the Honorable William H. Alsup as to when should they file their Answer to the original
8 Complaint. *Second*, Plaintiff Johnson should be free to seek relief against any party and/or
9 defendant that justice so requires him to do so in order to fully adjudicate the alleged claims not
10 only against the Chevron Defendants, but against the Dismissed Defendants. Here, justice has
11 always been liberal in this given area to ensure that a plaintiff's right to seek relief against a
12 defendant(s) is not compromised by a simple technicality of the pleadings. *Third*, Plaintiff
13 Johnson asserts that this very matter is before this Court and whether the Court upholds is very
14 long tradition of "freely [granting leave] when justice so requires" is now being tested in this
15 action. *See* Fed.R.Civ.P(15(a)). Counsel for Chevron knew from the very moment when the
16 Honorable William H. Alsup lifted the stay that Plaintiff Johnson would utilize his right once to
17 amend the original Complaint once as a matter of course. As previously stated, Counsel for
18 Chevron striped Plaintiff Johnson of that right with false, misleading and deceptive tactics when
19 the parties filed a stipulation and when the Court consummated that stipulation on April 1, 2008,
20 to dismiss the Dismissed Defendants. *See* Court Docket #'s 30 and 31 respectively.

21 It is even more clear that Counsel for Chevron had advance notice that Plaintiff Johnson
22 wanted to seek leave to amend the original Complaint as certain language in the April 1, 2008
23 Stipulation addressed such by stating that "...including any and all claims alleged against them,
24 *without prejudice*". *See* April 1, 2008, Stipulation at 2:3-4 and at Court Docket #30. It should
25 also be clear to the Court in the communications between the parties that Counsel for Chevron
26 wanted to get out of having to prepare a motion to dismiss that they had to file by April 3, 2008,
27 or Counsel for Chevron would be left with filing a motion for summary judgment or in the
28 alternative adjudication to have such claims as the 42 U.S.C. section 1983 removed from this

1 action if the parties were unable to resolve such through the settlement negotiation process.
 2 Given the fact that Counsel for Chevron was unclear as to how Plaintiff Johnson was going to
 3 use a 42 U.S.C. section 1983 claim against the Chevron Defendants and the Dismissed
 4 Defendants, Counsel for Chevron sought to remedy this problem now versus taking a chance that
 5 they would be unsuccessful later through the motion for summary judgment or in the alternative
 6 adjudication phase of this action.

7 **A. Filing Of A First Amended Complaint Was Explicitly Contemplated By Counsel**
 8 **For Chevron**

9 Plaintiff Johnson's motion to file an amended complaint should come as no surprise to
 10 Counsel for Chevron. In March of 2008, Plaintiff Johnson contemplated as well as
 11 communicated that the operative pleading would eventually have to be further amended at some
 12 later point in order to properly name the Dismissed Defendants as well as to assert new claims
 13 against all of the defendants. Even with this in mind, Plaintiff Johnson *streamlined* this action
 14 for settlement purposes *only*, in which Counsel for Chevron was clearly made aware of in prior
 15 communications between the parties and in pleadings and documents on file with the Court.

16 It is not by accident that Counsel for Chevron began discussing with Plaintiff Johnson
 17 about a proposal for settlement on the morning the April 1, 2008, Stipulation was filed with the
 18 Court. Plaintiff Johnson even went on to inform Counsel for Chevron that they had "45 days" to
 19 complete such a settlement negotiation process or he would re-add the Dismissed Defendants by
 20 amending the original Complaint. *See* Plaintiff's Decl ISO of Motion for Leave to File A First
 21 Amended Complaint at ¶ 42. The Court in its infamous wisdom in this given area can and will
 22 recognize that Plaintiff Johnson was using a discovery and/or tool to bring about settlement in an
 23 effort to assist the Court in clearing its docket of an action. Plaintiff Johnson's action were also
 24 do to encourage the parties to start the process of settlement negotiations *immediately* without
 25 the need for a long drawn out discovery process as well as a 12-15 day trial. The Court will also
 26 recognize that Plaintiff Johnson's actions were in keeping with this action being set for
 27 settlement negotiations through the Court's ADR Program. Given such, Plaintiff Johnson's
 28 actions should not be construed as *bad faith* tactics as alleged by Counsel for Chevron.

B. Counsel For Chevron States To Plaintiff Johnson That It Had An April 3, 2008 Deadline To File A Motion To Dismiss The Dismissed Defendants Per The Court's Rules

On March 24, 2008, Plaintiff Johnson informed Counsel for Chevron that he was in agreement with her that he had not exhausted all mandatory administrative remedies under Title VII and the California Fair and Housing Act as no right to sue letter had been issued for the Dismissed Defendants. Plaintiff Johnson also informed Counsel for Chevron that a party could still add additional defendants after an original Complaint had been filed without the need to adhere to Title VII and the California Fair Employment and Housing Act guidelines of exhausting all mandatory administrative remedies. Plaintiff Johnson further informed Counsel for Chevron via telephone that he would re-add the Dismissed Defendants under a 42 U.S.C. section 1981 claim. *See* Exhibit A to Plaintiff Johnson's Reply to Defendant's Opposition to Plaintiff Johnson's Request for Miscellaneous Relief (letter) at Court Docket #47. *See also* ¶ 12 Decl. of Plaintiff Johnson ISO of Plaintiff's Motion for Leave to File A First Amended Complaint.

On March 27, 2008, Counsel for Chevron requested to know if Plaintiff Johnson would stipulate to the dismissal of the individual defendants other than the Chevron Defendants as the April 24, 2008, CMC before the Honorable William H. Alsup was fast approaching and Counsel for Chevron needed to file their Motion to Dismiss by April 3, 2008, but was hesitant to start expending time an effort preparing if the parties could reach an agreement pertaining to the dismissal of the Dismissed Defendants for amongst other things for settlement purposes. *See* Exhibit B to Plaintiff Johnson's Reply to Defendant's Opposition to Plaintiff Johnson's Request for Miscellaneous Relief (letter) at Court Docket #47. *See also* ¶ 20 Decl. of Plaintiff Johnson ISO of Plaintiff's Motion for Leave to File A First Amended Complaint. On March 27, 2008, Plaintiff Johnson also requested that Counsel for Chevron provide him with the Civil Local Rule or rules that state Counsel for Chevron had to file a Motion to Dismiss by April 3, 2008. Plaintiff Johnson also informed Counsel for Chevron that he felt having to agree to stipulate to dismiss the Dismissed Defendants should not be contingent on the parties agreeing to move the April 10, 2008, CMC out thirty (30) days. *See* Exhibit C to Plaintiff Johnson's Reply to Defendant's Opposition to Plaintiff Johnson's Request for Miscellaneous Relief (letter) at Court

Docket #47. *See also* ¶ 19 Decl. of Plaintiff Johnson ISO of Plaintiff's Motion for Leave to File A First Amended Complaint.

Plaintiff Johnson agreed to stipulate to dismiss the Dismissed Defendants with the understanding with Counsel for Chevron that he could re-add the Dismissed Defendants at a later date if the parties were unsuccessful in reaching a settlement in sixty (60) days. *See* 4:1-4 of April 16, 2008, Joint CMS at Court Docket #33. *See also* ¶ 32 Decl. of Plaintiff Johnson ISO of Plaintiff's Motion for Leave to File A First Amended Complaint. Furthermore, in order for Counsel for Chevron, Plaintiff Johnson and the Court *not* to waste time in reviewing a motion to dismiss, an opposition and any such reply to a motion to dismiss, Plaintiff Johnson also informed Counsel for Chevron that he was going to file an amended Complaint with the Court on April 1, 2008. By filing an amended Complaint would have removed the Dismissed Defendants from under the 42 U.S.C. section 1983 claim and re-added them under the correct 42 U.S.C. claim of section 1981. Plaintiff Johnson referred to such to Counsel for Chevron as a procedural move to properly assert the correct claims against the Dismissed Defendants.

Now Counsel for Chevron wants to state that there was never such an agreement to dismiss the Dismissed Defendants with the understanding that Plaintiff Johnson could re-add them at a later date. Plaintiff Johnson contends otherwise as such an agreement is reflected in the Court's record. *See* May 9, 2008, Joint CMS at 11:5-15 and at Court Docket #44. For the reasons stated herein, Counsel for Chevron should be *admonished* for its misconduct in providing false and misleading information to Plaintiff Johnson and the Court on this given subject.

C. Counsel For Chevron Contends That Plaintiff Johnson Can Only Seek Relief And Damages Against Chevron Defendants For The Dismissed Defendants Alleged Misconduct

Plaintiff Johnson contends that he informed Counsel for Chevron that the reason he sought to re-add the Dismissed Defendants under a 42 U.S.C. section 1981 claim was due in part to The Chevron Way¹², which holds individuals accountable for there conduct. Plaintiff Johnson specifically informed Counsel for Chevron of the following," ...while I'm leaning toward the

¹² Integrity – We are honest with others and ourselves. We meet the highest ethical standards in all business dealings. We do what we say we will do. We accept responsibility and hold ourselves accountable for our work and our actions. <http://www.chevron.com/about/chevronway/>, Chevron Corporation – The Chevron Way, June 5, 2008.

1 decision of agreeing to a stipulation to remove all of the defendants except [the Chevron
 2 Defendants] such may only delay the fact that I could/will amend the complaint to add the
 3 [Dismissed Defendants] at a later date. I believe that discovery in this particular matter warrants
 4 such as I truly believe in The Chevron Way. Given such, these employees must be held
 5 accountable for there actions.” See Exhibit A, to Plaintiff’s Reply to Defendant’s Opposition to
 6 Plaintiff’s Request for Miscellaneous Relief (letter) at Court Docket #47. See also ¶ 13 Decl. of
 7 Plaintiff Johnson ISO of Plaintiff’s Motion for Leave to File A First Amended Complaint.

8 Plaintiff Johnson had a telephone conference call with Counsel for Chevron wherein
 9 amongst other things the parties discussed the fact that Counsel for Chevron did not understand
 10 why Plaintiff Johnson wanted to keep and/or re-add the Dismissed Defendants. Plaintiff Johnson
 11 then informed Counsel for Chevron that in order for Counsel for Chevron to understand The
 12 Chevron Way, Counsel for Chevron had to hear David O’Reilly, CEO and Chairman of the
 13 Board speak about The Chevron Way and how such is fully incorporated into Chevron
 14 Corporation and its subsidiaries. See ¶ 8-9 Decl. of Plaintiff Johnson ISO of Plaintiff’s Motion
 15 for Leave to File A First Amended Complaint. Likewise, Plaintiff Johnson has every right to
 16 seek relief from the Dismissed Defendants in order to hold them accountable for any alleged
 17 wrongdoing by re-naming them in his action under the various laws that provide Plaintiff
 18 Johnson with such relief. As stated by Counsel for Chevron, even if Plaintiff Johnson is
 19 successful in proving the claims herein alleged, the Dismissed Defendants (employees) would
 20 not have to pay a dime, such would be paid by the Chevron Defendants. Plaintiff Johnson also
 21 informed Counsel for Chevron that if such were to occur, then in his eyes the Dismissed
 22 Defendants (employees) would be held accountable under The Chevron Way.¹³

23 The above clearly shows that the parties discussed and agreed that Plaintiff Johnson
 24 could re-add the Dismissed Defendants at a later date as well as the parties discussed
 25 *streamlining* this action for settlement purposes by dismissing the Dismissed Defendants. There
 26 is nothing in the April 1, 2008, Stipulation or on file with the Court that states that Counsel for
 27 Chevron reserves its right to oppose Plaintiff Johnson’s motion for leave to amend the original
 28

¹³ *Id.*

1 Complaint. Such language does not exist as Counsel for Chevron agreed that Plaintiff Johnson
 2 could amend the original Complaint at a later date. *See* ¶¶ 10, 13, 23 and 37 of Decl. ISO
 3 Plaintiff's Motion for Leave to File A First Amended Complaint. *See also* Court Docket #31.
 4 For the reasons stated herein, Counsel for Chevron should be *admonished* for its misconduct in
 5 providing false and misleading information to Plaintiff Johnson and the Court on this given
 6 subject.

7 **D. Counsel For Chevron Breached The Agreement Surrounding The Parties**
 8 **Dismissing The Dismissed Defendants**

9 Prior to the parties agreeing to dismiss the Dismissed Defendants, Counsel for Chevron
 10 and Plaintiff Johnson agreed that such was being done amongst other things to *streamline* this
 11 action for settlement purposes. Such is contrary to any statements made by Counsel for Chevron
 12 in its May 18, 2008, Reply to Plaintiff Johnson's Request for Miscellaneous Relief (letter) at
 13 Court Docket #46 wherein Counsel for Chevron states the following, [t]hereafter, Plaintiff
 14 advised me that he would agree to voluntarily dismiss these Defendants as he acknowledged that
 15 he had not exhausted his administrative remedies prior to bringing suit against them... that these
 16 individuals were supposedly being dismissed to streamline the case for settlement purposes, as
 17 Plaintiff now asserts. (For additional discussion, please see § "D-Pleadings" of the parties'
 18 previously filed Joint [CMC]". *See* Counsel for Chevron's May 18, 2008, Reply to Plaintiff
 19 Johnson's Request for Miscellaneous Relief (letter) at p 2 ¶ 3 at Court Docket #46.

20 Counsel for Chevron has not only mislead and provided false and misleading information
 21 to Plaintiff Johnson, but has also done the same too the Court. On April 1, 2008, at 6:00 a.m.
 22 Counsel for Chevron informed Plaintiff Johnson after Plaintiff Johnson sent the April 1, 2008,
 23 Stipulation to Counsel for Chevron to file with the Court the following, "Samuel, I received your
 24 fax and filed the Stipulation this morning to ensure the Court receives your request for
 25 continuance promptly. Again, than[k] you for your courtesy regarding this matter. I will wait to
 26 receive your proposal for a resolution of this action..." *See* Exhibit D to Plaintiff Johnson's
 27 Reply to Defendant's Opposition to Plaintiff Johnson's Request for Miscellaneous Relief (letter)
 28 at Court Docket #47. *See also* ¶ 24 Decl. of Plaintiff Johnson ISO of Plaintiff's Motion for
 Leave to File A First Amended Complaint. More telling that the parties amongst other things

1 stipulated to dismiss the Dismissed Defendants to *streamline* this action for settlement purposes
 2 is the following communication from Plaintiff Johnson to Counsel for Chevron, “Delia, before
 3 proceeding any further on the proposal for a resolution of this action, I will need to know
 4 whether or not you or Filice Brown Eassa & Mc[L]eod, LLP has the authority to begin and enter
 5 into settlement discussions with me pertaining to this matter as well as to execute a settlement if
 6 the parties can come to some agreement regarding this action and the WCAB matter...” *See*
 7 Exhibit E to Plaintiff Johnson’s Reply to Defendant’s Opposition to Plaintiff Johnson’s Request
 8 for Miscellaneous Relief (letter) at Court Docket #47. *See also* ¶ 25 Decl. of Plaintiff Johnson
 9 ISO of Plaintiff’s Motion for Leave to File A First Amended Complaint.

10 Even more telling that the parties stipulated amongst other things to dismiss the
 11 Dismissed Defendants to *streamline* this action for settlement purposes is the following
 12 communication from Counsel for Chevron to Plaintiff Johnson, “Samuel, Yes. We have
 13 authority to discuss settlement with you. I am required to forward any settlement demand [or]
 14 proposal to Chevron and I will do so”. *See* Exhibit F to Plaintiff Johnson’s Reply to Defendant’s
 15 Opposition to Plaintiff Johnson’s Request for Miscellaneous Relief (letter) at Court Docket #47.
 16 *See also* ¶ 26 Decl. of Plaintiff Johnson ISO of Plaintiff’s Motion for Leave to File A First
 17 Amended Complaint. Furthermore, Plaintiff Johnson believes that he has provided enough
 18 supporting documentation to persuade the Court that he has not acted in *bad faith* in trying to re-
 19 add the Dismissed Defendants. It is Counsel for Chevron who has acted in *bad faith* and now
 20 wants the Court to reward it for its misconduct by denying Plaintiff Johnson’s motion to amend
 21 the original Complaint.

22 Plaintiff Johnson *vigorously* asserts that he is not re-adding or trying to amend the
 23 original Complaint in *bad faith* as erroneously asserted by Counsel for Chevron. It is Counsel
 24 for Chevron who is acting in *bad faith* after agreeing to stipulate to remove the Dismissed
 25 Defendants amongst other things so that it would not have to expend time preparing a Motion to
 26 Dismiss to be filed with the Court before April 3, 2008. Counsel for Chevron has clearly stated
 27 on the record that it did not agree to dismiss the Dismissed Defendants for settlement purposes.
 28 *See* April 16, 2008, Joint CMS at 9-11:7 and at Court Docket #33. Such is contrary to

discussions that occurred before the parties stipulated to dismiss the Dismissed Defendants and even after the parties stipulated to dismiss the Dismissed Defendants. For the reasons stated herein, Counsel for Chevron should be *admonished* for its misconduct in providing false and misleading information to Plaintiff Johnson as well as to the Court on this given subject. It is well within a Judge's authority and full discretion to *admonish* a defendant for such misconduct as what Counsel for Chevron has exhibited here. Given such, Plaintiff Johnson requests that the Court exercise its full authority and discretion by placing such misconduct of Counsel for Chevron's in the form of a written *admonishment* in hopes that such will deter Counsel for Chevron from making similar types of misconduct in the future.

E. Counsel for Chevron Provided False And Misleading Information To Plaintiff Johnson And The Court And Should Be Admonished And Sanctioned For Such Misconduct And Unprofessional Behavior

Counsel for Chevron has just outright provided false and misleading information to Plaintiff Johnson and the Court in pleadings and at the May 21, 2008, CMC on information surrounding why the parties entered into the April 1, 2008, Stipulation to dismiss the Dismissed Defendants. Such actions by Counsel for Chevron have denied Plaintiff Johnson with his "right as a matter of course to file an amended Complaint" and almost caused the Court to abandon its long standing procedures and rules for setting cases for settlement through its ADR Program. As the Court should recall, it was Counsel for Chevron would wanted to abandoned the Court's long standing and history of setting an action for settlement negotiations within ninety (90) days from a initial Case Management Conference that had been selected for the Court's ADR Program. All of Counsel for Chevron's actions have caused Plaintiff Johnson to spend time, energy and resources to seek leave from the Court to file a First Amended Complaint. Such actions by Counsel for Chevron as outlined in this pleading, supporting pleadings, and documents and pleadings in the Court's record begs this Court to admonish and sanction Counsel for Chevron. Should the Court agree with Plaintiff Johnson's assessment, then Plaintiff Johnson respectfully requests that the Court on its on initiative issue a Fed.R.Civ.P 11(b) Show Cause Order as to why Counsel for Chevron should not be sanctioned for providing false, misleading and deceptive statements to Plaintiff Johnson and the Court as to why the parties stipulated to dismissing the

Dismissed Defendants. Plaintiff Johnson believes that the Court will find that Counsel for Chevron in fact provided false, misleading and deceptive statements in this given area.

F. Plaintiff Johnson Has Not Acted In Bad Faith, Amongst Various Other Things As Erroneously Alleged By Counsel for Chevron

When the briefing on this given subject has concluded, the Court will determine that it was in fact Counsel for Chevron who has acted in *bad faith* in not honoring the April 1, 2008, Stipulation (agreement) that *streamlined* this action for settlement purposes. Plaintiff Johnson further asserts that it is not in his best interest to state to this Court (the Honorable Susan Illston) at the May 21, 2008, CMC that he *streamlined* this action for settlement purposes amongst other things, then only to try and fully litigate it with false pretenses of waiving a “*white flag*” signaling that he wants to settle this action, but all the time *vigorously* continuing to litigate this action using the Court’s resources in an improper manner. More to the point, Plaintiff Johnson believes that the Court will recognize that Plaintiff Johnson stated to Counsel for Chevron that it “*has 45 days*” to settle this action or he would re-add the Dismissed Defendants was such a statement to be used as a discovery and/or tool for settlement purposes. Counsel for Chevron seems surprised that someone would even use such a discovery and/or tool for *settlement* purposes. Plaintiff Johnson contends that such is done everyday in actions before this Court and the Court welcomes, more to the point the Court encourages such actions as what Plaintiff Johnson has done here in order to assist the Court with removing a case from its docket.

With the above in mind, there is nothing wrong with a party using a discovery and/or tool to bring about a settlement in an action before the Court. Plaintiff Johnson further asserts that there is no “*bad faith, among various others*” in Plaintiff Johnson stating to Counsel for Chevron that he would re-add the Dismissed Defendants if a settlement was not reached during the time frame as specified above. Such a statement by Plaintiff Johnson is contrary to Counsel for Chevron’s statement of, [t]hus, while Plaintiff [Johnson] may be using this threatened amendment as a means of leveraging or extracting a settlement from Chevron...”. See Counsel for Chevron’s May 18, 2008, Reply to Plaintiff Johnson’s Request for Miscellaneous Relief (letter) at p 3 ¶ 1 and at Court Docket #46. Plaintiff Johnson has every right to amend the

1 pleadings to seek relief against any defendant that has done alleged wrongdoing. The Court has
 2 a long standing in granting such a request for a plaintiff like Plaintiff Johnson to amend a
 3 pleading absent *bad faith*.

4 For the reasons stated herein, Plaintiff Johnson requests that Counsel for Chevron, like
 5 any other defendant should be *admonished* for not only misleading Plaintiff Johnson, but for
 6 misleading the Court in this given area. Such actions by Counsel for Chevron has now caused
 7 Plaintiff Johnson to expend resources and time in having to prepare not only a request to seek
 8 miscellaneous relief (letter), but to provide a reply opposition to the Chevron Defendant's
 9 opposition to Plaintiff Johnson's request for miscellaneous relief (letter). Notwithstanding the
 10 fact that Plaintiff Johnson has prepared this motion as well as other supporting documents to
 11 obtain such relief from the Court. Given the aforementioned, Plaintiff Johnson requests that this
 12 Court issue a written *admonishment* regarding Counsel for Chevron's misconduct. Plaintiff
 13 Johnson also requests that the Court sanction Counsel for Chevron in hopes that such will deter
 14 future misconduct.

15 **VI. THE PROPOSED FIRST AMENDED COMPLAINT IS NEITHER UNDULY**
 16 **PREJUDICIAL TO THE CHEVRON DEFENDANTS**

17 **A. The Proposed Amendment Is Not Unduly Prejudicial**

18 Plaintiff Johnson's motion to amend will not unduly prejudice the Chevron Defendants.
 19 The reason is self-evident. Even assuming *arguendo* that the instant motion to amend were
 20 denied or had never been filed, Plaintiff Johnson could always elect to file anew original
 21 Complaint against the Dismissed Defendants and the Chevron Defendants from scratch asserting
 22 a 42 U.S.C. section 1981 claim as well as seeking other such relief for the Dismissed Defendants
 23 and the Chevron Defendants alleged wrongdoings. Thus, regardless of the outcome of this
 24 motion and Plaintiff Johnson's plan for amendment, the Dismissed Defendants and the Chevron
 25 Defendants would always be subject to facing the same claims from Plaintiff Johnson as are
 26 asserted in this proposed First Amended Complaint. Because the Chevron Defendants face the
 27 exact same exposure with or without the instant motion, Counsel for Chevron can hardly claim to
 28 be prejudiced by the amended Complaint. To the contrary, proceeding by way of an amended
 Complaint, as opposed to having the Dismissed Defendants and the Chevron Defendants in

1 another action, which would have to start from scratch, will serve to *streamline* the process by
2 not requiring the parties to waste valuable juridical resources in starting an identical action anew
3 and “*reinventing the wheel*”.

4 The foregoing realization should end the inquiry. Beyond that, however, the relatively
5 early procedural posture of this action precludes any finding of undue prejudice. Given this early
6 procedural stage of this action, the Chevron Defendants can hardly lay claim to undue prejudice
7 from the amending of the original Complaint. Given the early procedure posture of this action
8 and the fact that the Chevron Defendants would face the precise same complaint as is proposed
9 to be filed here even if the motion to amend were to be denied, the Chevron Defendants can lay
10 no claim to any undue prejudice that would serve to defeat this instant motion.

11 **B. The Proposed Amendment Is Not Futile**

12 In a filing in response to the Honorable William H. Alsup’s Request for Clarification
13 Clarification, Counsel for Chevron informed the Court of the following “[d]efendants’
14 responsive pleadings, which will comprise of Motions to Dismiss rather than Answers....”. *See*
15 1:27-28 of Defendants’ Response to Court’s January 7, 2008, Request for Clarification. *See also*
16 Court Docket #19. However, the Chevron Defendants filed an Answer to the original Complaint
17 on April 10, 2008, instead of filing “Motions to Dismiss”. Based on the Chevron Defendants
18 actions in filing an Answer and not “Motions to Dismiss” should make it clear to all concerned
19 that there is no grounds for the Chevron Defendants to argue futility as a basis to deny Plaintiff
20 Johnson’s instant motion. Because the allegations in the proposed First Amended Complaint are
21 almost verbatim identical to those found in Plaintiff Johnson’s original Complaint, there is
22 plainly no grounds for the Chevron Defendants to argue that the amendment would be futile.
23 Indeed, futile is typically an argument that is used when a motion to dismiss the original
24 Complaint has been granted and the losing plaintiff seeks to salvage that loss by seeking leave to
25 amend the original Complaint. Where, as here, Plaintiff Johnson faces no such underlying
26 motion to dismiss the original Complaint as the Chevron Defendants decided that they in fact
27 had no basis to carry out their baseless threat of filing “Motions to Dismiss”, but instead filed an
28 Answer to the original Complaint on April 10, 2008. *See* Court Docket #32. The Court should

1 give *credence* to Plaintiff Johnson's claims as well as grant such relief in Plaintiff Johnson's
2 Motion to File a First Amended Complaint given the fact that the Chevron Defendants knew that
3 they would not be successful with their baseless threat of "[d]efendants' responsive pleadings,
4 which will comprise of Motions to Dismiss rather than Answers...". See 1:27-28 of Defendants'
5 Response to Court's January 7, 2008, Request for Clarification. See also Court Docket #19.

6 Given the above, there is no basis for the Chevron Defendants to even remotely argue
7 futility because it did not exercise its right to file a motion to dismiss as well as knew that it
8 could not persuade the Court to grant such a request to dismiss Plaintiff Johnson's claims in the
9 original Complaint. Such by definition, defeats a futility argument that would be made by the
10 Chevron Defendants. However, the Chevron Defendant's own documents provide the requisite
11 evidentiary support for the claims asserted in the proposed First Amended Complaint, (which are
12 also found in the original Complaint). The gravamen of the proposed First Amended Complaint,
13 like that of the original Complaint, is that the Chevron Defendants subjected Plaintiff Johnson as
14 well as others to discriminatory and retaliatory employment practices based on their race,
15 discriminated and retaliated against Plaintiff Johnson and others for participating in a protected
16 activity, discriminated against Plaintiff Johnson for complaining that others were being subjected
17 to discriminatory and retaliatory employment practices and retaliated against Plaintiff Johnson
18 by wrongfully terminating his employment on August 6, 2006. Furthermore, as part of the
19 discovery (10,000 documents) that have been produced to date in the administrative proceeding
20 further diminishes the Chevron Defendants argument in support of a motion to dismiss as
21 Counsel for Chevron has stated to the Court that majority of these documents pertain to Plaintiff
22 Johnson's claims in this action. On May 14, 2008, Plaintiff Johnson propounded requests for
23 production of documents and interrogatories, set one on the Chevron Defendants. On June 2,
24 2008, Plaintiff Johnson propounded requests for admissions, set one on the Chevron Defendants.
25 This discovery addresses *some*, **not** *all* of the issues at the heart of the original Complaint's
26 allegations as such was propounded for *settlement* purposes *only*.

27 VII. CONCLUSION

28 In sum, granting Plaintiff Johnson's Motion for Leave to File A First Amended

Complaint is likely to speed rather than delay resolution of the issues by identifying the scope of potential disputes of fact between the parties to assist in *possible settlement* or in clarifying the issues in advance of the scheduled trial. As stated in the parties April 16, and May 9, 2008, Joint CMS' as well as on the record at the May 21, 2008, CMC, Plaintiff Johnson believes that setting this action on an expedited (fastrak) trial schedule does not provide him with enough time to properly conduct full discovery to prove his alleged claims against the Chevron Defendants. The need to move the April 2009, scheduled trial and all other dates is supported in Plaintiff Johnson's Initial Disclosures wherein he disclosed the various categories and/or types of documents that he would need from the Chevron Defendants. Plaintiff Johnson further disclosed to Counsel for Chevron in his Initial Disclosures forty (40) or so names of individuals who have knowledge and/or information about the alleged claims asserted by Plaintiff Johnson. In the month of June of 2008, Plaintiff Johnson further informed Counsel for Chevron that he would be serving requests for production of documents, interrogatories and requests for admissions, set two. Given all of the above and the fact that Plaintiff Johnson will be supplementing his Initial Disclosures within the next four to six (4-6) weeks further supports his position that the April 2009, scheduled trial date, especially the September 26, 2008, non-expert discovery cut-off should be moved out.

For all of the foregoing reasons, Plaintiff Johnson respectfully requests that the Court enter an order granting Plaintiff Johnson's Motion for Leave to File a First Amended Complaint, deeming the amendment filed as of the date of the Order, move out the April 2009, scheduled trial date as well as all other dates and grant any additional relief that this Court deems just and proper from the filing of this pleading and any of the pleadings by Plaintiff Johnson on this subject matter.

Date this 11th day of June 2008

/s/

SAMUEL BERNARD JOHNSON III